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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware Corporation
headquartered in California,

Defendant.

Case No. 5:20-cv-08570-LHK

**DEFENDANT'S NOTICE OF
SUPPLEMENTAL INFORMATION
REGARDING CLAWBACK DISPUTE**

Judge: Hon. Lucy H. Koh

1 In response to the Court's request during the December 14, 2021 hearing, Defendant
 2 hereby provides copies of two filings from *FTC v. Facebook, Inc.*, No. 1:20-cv-03590-JEB
 3 (D.D.C. 2020).¹ Attached as Exhibit 1 is the FTC and Facebook's September 7, 2021 Joint
 4 Motion for Entry of Stipulated Order (Dkt. 79). Exhibit 2 is Judge Boasberg's Order granting
 5 the Joint Motion for Entry of Stipulated Order (Dkt. 80).

6 Facebook also provides additional clarification regarding the sequencing of the
 7 clawbacks and Judge Boasberg's order in response to the Court's questions at the hearing:

- 8 1. August 18, 2021: Facebook receives an email from the FTC identifying a produced
 9 email containing potentially privileged information. Facebook informs the FTC the same
 10 day that it will be clawing back the privileged portions (language from portions of two
 11 sentences) from that email chain.
- 12 2. August 19, 2021: Facebook notifies the FTC that it is clawing back portions of eleven
 13 documents related to the document the FTC identified on August 18.
- 14 3. August 19, 2021: The FTC files its First Amended Complaint under seal. The First
 15 Amended Complaint does not reference any of the clawed-back material.
- 16 4. August 20, 2021: Facebook notifies the *Klein* Plaintiffs that it is clawing back Clawback
 17 Volume 4, which consists of the material clawed back from the FTC on August 18 and
 18 August 19.
- 19 5. September 3, 2021: Facebook and the FTC participate in a conference call with Judge
 20 Boasberg during which Judge Boasberg suggests that the parties agree that the FTC may
 21 include some of the material clawed back on August 18 (the "Disclosed Language") in its
 22 Substitute Amended Complaint, and that the FTC's inclusion of that material does not
 23 waive any otherwise-applicable privilege or protection.²

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 27 ¹ On October 28, 2021, Facebook changed its name to Meta Platforms, Inc.

28 ² The Disclosed Language relevant to the FTC dispute is a portion of the material covered by what Plaintiffs have
 labeled Redaction R5 in the representative documents that Plaintiffs submitted with their brief. *See Dunne Decl.*
Exs. C, D, E, Dkts. 184-06, 184-07, 184-08.

- 1 6. September 7, 2021: Facebook and the FTC move jointly in *FTC v. Facebook* for entry of
2 a Stipulated Order regarding the FTC's inclusion of the Disclosed Language in a
3 Substitute Amended Complaint.
- 4 7. September 8, 2021: Judge Boasberg enters the Stipulated Order, which provides, *inter*
5 *alia*, that (1) the FTC may include the Disclosed Language in a Substitute Amended
6 Complaint, but that "inclusion of the Disclosed Language is for purposes of the Substitute
7 Amended Complaint only and, except for permitting the FTC and the Court to review and
8 rely upon the Disclosed Language, does not waive any privilege or protection applicable
9 to the underlying document (or similar documents) in the litigation pending before the
10 Court or in any other federal, state, or other proceeding, nor does it waive the privilege as
11 to information related to the same subject matter as the Disclosed Language"; and (2)
12 "the FTC shall treat the Disclosed Language as confidential, and shall redact it in the
13 version of the Substitute Amended Complaint filed on the public docket."
- 14 8. September 8, 2021: The FTC files the Substitute Amended Complaint, which now
15 contains the Disclosed Language. Consistent with the parties' stipulation, the Disclosed
16 Language is redacted from the public version of the Substitute Amended Complaint.
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1 Dated: December 16, 2021

Respectfully submitted,

2 By: /s/ Sonal N. Mehta

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